

# ELLIS:LAWHORNE

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April 13, 2005

## VIA ELECTRONIC MAIL & HAND-DELIVERY

The Honorable Charles L.A. Terreni  
Executive Director  
**South Carolina Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of New  
Schedule of Rates and Charges for Water and Sewer Services  
**Docket No. 2005-13-W/S, ELS File No. 1015-10306**

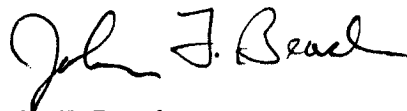
Dear Mr. Terreni:

Enclosed are the original and ten (10) copies of the **Motion to Allow Applicant to Withdraw Application without Prejudice** in the above-referenced docket.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it with the bearer of these documents. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

With kind regards, I am

Very truly yours,

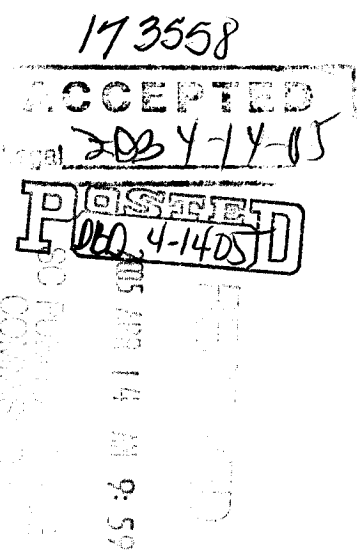


John F. Beach

JFB/cr

cc: Mr. Mark S. Wrigley  
Florence Belser, Esquire  
all parties of record

Enclosures



**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2005-13-W/S**

RECEIVED  
2005 APR 14 AM 9:59  
SC PUBLIC SERVICE  
COMMISSION

IN RE:

Application of Wyboo Plantation  
Utilities, Inc. for Approval of New  
Schedule of Rates and Charges for  
Water and Sewer Service

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**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Motion to Allow Applicant to Withdraw Application Without Prejudice** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Florence Belser, Esquire  
Office of Regulatory Staff  
Legal Department  
PO Box 11263  
Columbia SC 29211

Charles Cook, Esquire  
**Elliott & Elliott, PA**  
721 Olive Street  
Columbia SC 29205

  
\_\_\_\_\_  
Carol Roof

April 13, 2005  
Columbia, South Carolina

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2005-13-W/S**

RECEIVED  
2005 APR 14 AM 10:00  
SOUTH CAROLINA  
PUBLIC SERVICE  
COMMISSION

IN RE:

Application of Wyboo Plantation  
Utilities, Inc. for Approval of New  
Schedule of Rates and Charges for  
Water and Sewer Service

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)  
) **MOTION TO ALLOW APPLICANT TO**  
) **WITHDRAW APPLICATION WITHOUT**  
) **PREJUDICE**  
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NOW COMES Wyboo Plantation Utilities, Inc. ("Wyboo") and, pursuant to the laws of The South Carolina Public Service Commission, (the "Commission"), hereby moves to withdraw its Application for Approval of a New Schedule of Rates and Charges for Water and Sewer Service ("Application") without prejudice to its right to refile for such relief at any time. In support of this Motion, Wyboo shows as follows:

On January 9, 2005, Wyboo filed its Application for approval of new schedule of rates and charges for water and sewer service. The Commission established Docket No. 2005-13-W/S and issued its Notice of Filing and Hearing on February 24, 2005. Applicant's testimony is due to be filed on April 28, 2005 and the hearing in this matter is scheduled for May 27, 2005.

Wyboo has a need to withdraw its Application so that it will have additional time to evaluate costs and benefits of certain projects that may be required by the South Carolina Department of Environmental Control ("DHEC"), and the effect of those projects and other financial considerations upon the proposed rate schedule. Wyboo would also like the opportunity to

attempt to more fully inform the intervenors in this docket of the costs and benefits associated with these projects and Wyboo's need for rate relief.

Wyboo has an immediate need for rate relief that is driven in part by the subject projects, and the length of time that has passed since its last rate proceeding. Consequently, Wyboo will need to refile a rate application as soon as possible. Wyboo has need to refile its application within the next three to six months.

The Commission has previously granted other similarly-situated utilities the relief Wyboo Plantation is requesting herein. For example, in Docket No. 1991-641-W/S, Carolina Water Service, Inc. ("CWS") moved to withdraw its application to increase its water and sewer rates without prejudice to its right to refile for rate relief at any time. CWS's asserted that it wished to take additional time to evaluate the costs and benefits of several major projects, and to inform its customers as to those costs and benefits.

The Commission granted CWS's motion in Order No. 1992-274 (attached), ruling that CWS was "not precluded by the previous filing of said Application and Rate Schedules from seeking rate relief as the Company deems appropriate, including the filing of an application for rate relief before December 16, 1992" [which was 12 months after the date of the original rate filing].

Order No. 92-274, p 2-3.

§58-5-240(F) states:

After the date the schedule is filed with the Commission, no **further rate change request** under this section may be filed until twelve months have elapsed from the date of filing of the schedule [emphasis added].

This statutory provision is not inconsistent with the Commission's ruling in Order No. 92-

274, since it only prohibits the utility from requesting a *further* (that is, an additional) rate increase immediately on the heels of the last completed rate proceeding. As demonstrated by Order No. 92-274, the provision does not prohibit a utility from reapplying for rate relief within a twelve-month period if it has voluntarily withdrawn the previous application.

S.C Code Ann., §58-3-225(E) further supports Wyboo's motion. That 2004 statute states in relevant part:

A party may withdraw its petition, [or] application . . . from any Commission docket one time as a matter of right, *and without prejudice* provided that it does so prior to . . . the date that the withdrawing party's direct testimony addressing such petition, application . . . is due to be filed with the Commission [emphasis added].

In this case, Wyboo's direct testimony is not due to be filed until April 28, 2005. Thus, §58-3-225(E) makes it clear that Wyboo may now withdraw its application for rate relief "without prejudice," including any time constraints on the refiling of this application.


For the reasons set forth herein, Wyboo requests an order from the Commission ruling that:

1. Wyboo may withdraw its present Application and rate schedules without prejudice;
2. Wyboo is not precluded by its filing of the present Application for Rate Relief from seeking rate relief as Wyboo deems appropriate, including the filing of an application for rate relief before January 7, 2006.

3. And for such other and further relief as the Commission deems proper.

Respectfully submitted,

**ELLIS, LAWHORNE & SIMS, P.A.**

A handwritten signature in black ink, appearing to read "John F. Beach", written over a horizontal line.

John F. Beach, Esquire  
1501 Main Street, 5<sup>th</sup> Floor  
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Columbia, South Carolina 29202  
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Attorneys for Wyboo Plantation  
Utilities, Inc.

Columbia, South Carolina  
April 13, 2005

*Martin*

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-641-W/S - ORDER NO. 92-274  
APRIL 8, 1992

IN RE: Application of Carolina Water Service, ) ORDER  
Inc. for Approval of Increased Rates ) GRANTING  
and Charges for Water and Sewer ) PETITION  
Services Provided to Customers in its )  
Area in South Carolina. )

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to the Petition of Carolina Water Service, Inc. (CWS or the Company) to withdraw its Application and Rate Schedules of December 16, 1991 without prejudice.

On December 16, 1991, the Company filed an Application in the above-captioned docket seeking a general increase in its existing rates and charges for water and sewer service in accordance with schedules attached to and filed with the Application. Pursuant to the instructions of the Commission's Executive Director, the Company timely caused a Notice of Filing and Hearing to be published in newspapers of general circulation in the areas affected by the proposed rate increase and sent a copy of the Notice via the United States Postal Service to each customer affected by the proposed increase in rates and charges. Subsequent to the publication and mailing of the Notice, Petitions

to Intervene were filed by Mr. Cliff Floyd and Mr. Ron Alexander, on their own behalf, and by Elliott F. Elam, Jr., Esquire, on behalf of Steven W. Hamm, Consumer Advocate for the State of South Carolina. In addition, numerous letters of protest were filed by customers opposing a rate increase and raising a variety of concerns.

On or about April 6, 1992, the Company filed its Petition to Withdraw its Application and Rate Schedules Without Prejudice. The grounds for said Petition were that the Company wishes to take additional time to evaluate the costs and benefits of several major projects, and to inform its customers as to those costs and benefits. The Commission believes that the Company has stated sufficient grounds to withdraw its Application and Rate Schedules, without prejudice, and therefore, believes that the Company should not be precluded by the December 16, 1991 filing of its original Application and Rate Schedules from seeking rate relief as the Company deems appropriate, including the filing of an application for rate relief before December 16, 1992.

The Commission also believes that the Company should notify all of its customers of the withdrawal of the Company's Application as soon as possible. When and if the Company decides to file a new Application and Rate Schedules prior to December 16, 1992, it shall serve a copy of said new Application and Rate Schedules on all present parties in this action, including Mr. Cliff Floyd, Mr. Ron Alexander, and the Consumer Advocate for the State of South Carolina, and shall use the current docket number.



This Order shall have no effect, should the Company decide to file a new Application and Rate Schedules on or after December 16, 1992.

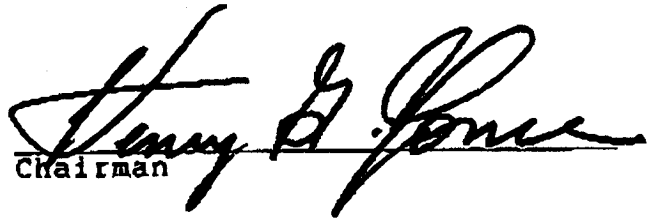
IT IS THEREFORE ORDERED THAT:

1. That the Company is hereby allowed to withdraw its Application and Rate Schedules dated December 16, 1991, without prejudice.
2. That the Company is not precluded by the previous filing of said Application and Rate Schedules from seeking rate relief as the Company deems appropriate, including the filing of an application for rate relief before December 16, 1992.
3. That the Company shall notify all customers of the withdrawal of its Application and Rate Schedules as soon as possible.
4. That the Company shall serve a copy of any new Application and Rate Schedules filed before December 16, 1992, on all present parties to this action, including Mr. Cliff Floyd, Mr. Ron Alexander, and the Consumer Advocate for the State of South Carolina, and shall use the current docket number.
5. That this Order shall not affect any new Application and Rate Schedules filed on or after December 16, 1992.

6. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

VICE Chairman



ATTEST:

  
Executive Director

(SEAL)